IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THRIVEST SPECIALTY FUNDING, LLC	:	
Plaintiff,	:	CIVIL ACTION
	:	No. 18-1877
v.	:	
WILLIAM E. WHITE,	:	
Defendant.	:	

ORDER

AND NOW, this 1st day of July, 2019, it is **ORDERED** that:

- Upon consideration of Thrivest's Complaint to Compel Arbitration (ECF No. 1), this action is **STAYED** in favor of arbitration.[1] The parties must advise the Court of the status of this action upon completion of arbitration.
- Thrivest's Motion to confirm the Emergency Arbitrator's Interim Award of Emergency Relief (ECF No. 21) is **GRANTED** and White's Application to Vacate the Interim Award is **DENIED** (ECF No. 24).[2]

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[1] Thrivest seeks to compel arbitration of a dispute arising out of the parties' Non-Recourse Finance Transaction, Sales and Purchase Agreement (the "Agreement"). White argues—in an affirmative defense improperly characterized as a counterclaim—that arbitration should not be compelled because Thrivest did not follow the Agreement's pre-arbitration procedures. However, "'procedural' questions which grow out of the dispute and bear on its final disposition' are presumptively *not* for the judge, but for an arbitrator, to decide." *Howsam v. Dean Witter Reynolds*, Inc., 537 U.S. 79, 84 (2002) (quoting *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 557 (1964)). *See also John Wiley & Sons*, 376 U.S. at 556-58 (holding that the issue of whether procedural conditions to arbitration have been met is a matter for the arbitrator, not the court). Because White only raises a procedural question, namely, whether Thrivest followed the Agreement's pre-arbitration procedures, the dispute must go to arbitration.

[2] Thrivest seeks confirmation of the arbitrator's Interim Award of Emergency Relief, which directed White to escrow a portion of the disputed funds. The Court may confirm this Interim Award because it is a "temporary equitable order[ ] calculated to preserve assets or performance needed to make a potential final award meaningful." *Pac. Reinsurance Mgmt. Corp. v. Ohio Reinsurance Corp.*, 935 F.2d 1019, 1023 (9th Cir. 1991).

"Under the terms of § 9 [of the FAA], a court 'must' confirm an arbitration award 'unless' it is vacated, modified, or corrected 'as prescribed' in §§ 10 and 11 [of the FAA]." *Hall St. Assocs., L.L.C. v.*

- Thrivest's Motion to Seal its Motion to Confirm Arbitration Award (ECF No. 20) is **DENIED**.[3]

/s/ Anita B. Brody
ANITA B. BRODY, J.

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Mattel, Inc., 552 U.S. 576, 582 (2008) (quoting 9 U.S.C. § 9). White asks this Court to vacate the award because the Emergency Arbitrator misapplied Rule 38(b) of the Commercial Arbitration Rules and Mediation Procedures, which governs emergency relief. The Court may vacate the Interim Award on this ground only if the arbitrator "so exceeded [his] powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made." 9 U.S.C. §10(a)(4). None of the legal errors alleged by White meet this demanding standard.

White also argues that the Emergency Arbitrator did not have the authority under the Agreement to order emergency relief. This is incorrect: Section 6(aa) of the Agreement states that "the parties agree that the arbitrator shall have authority to grant injunctive or other forms of equitable relief to either party."

[3] Once a document is filed with the court and "becomes a judicial record, a presumption of access attaches." *In re Avandia Mktg., Sales Practices and Prods. Liab. Litig.*, 924 F.3d 662, 672 (3d. Cir. 2019). "The party seeking to overcome the presumption of access bears the burden of showing that the interest in secrecy outweighs the presumption" and must show "that the disclosure will work a clearly defined and serious injury to the party seeking closure." *Id.* (internal quotation marks omitted). Thrivest fails to put forth any injury it will suffer if its Motion remains a publicly accessible court record. Therefore, the presumption of public access must prevail.